

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK LEE SMITH,

Petitioner,

v.

CASE NO. 5:17-cv-10806
HONORABLE JOHN CORBETT O'MEARA

E.C. BROOKS CORRECTIONAL
FACILITY WARDEN,

Respondent.

_____ /

ORDER DENYING A CERTIFICATE OF APPEALABILITY

Petitioner Derrick Lee Smith has appealed this Court's order dismissing his habeas corpus petition as duplicative of a previously filed habeas petition. See ECF No. 7. Petitioner may not appeal the Court's opinion and order of dismissal without first obtaining a certificate of appealability, 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b)(1), and a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

The habeas petition in this case raised the same issues and challenged the same convictions and sentence that are currently pending before the Court on remand from the United States Court of Appeals for the Sixth Circuit in case number 5:10-cv-

11052. Petitioner is not entitled to maintain two actions on the same subject in the same court at the same time, and when faced with a duplicative suit, a federal court may exercise its discretion to dismiss the lawsuit before it. *Twaddle v. Diem*, 200 F. App'x 435, 438 (6th Cir. 2006). Therefore, reasonable jurists would not conclude that Petitioner's claims deserve encouragement to proceed further, and the Court declines to grant a certificate of appealability.

Date: October 24, 2017

s/John Corbett O'Meara
United States District Judge

I hereby certify that on October 24, 2017 a copy of this order was served upon Petitioner using first-class U.S. mail.

s/William Barkholz
Case Manager